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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,212	07/18/2003	Rickey D. Hart	022956-0233	2862

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NUTTER MCCLENNEN & FISH LLP
WORLD TRADE CENTER WEST
155 SEAPORT BOULEVARD
BOSTON, MA 02210-2604

EXAMINER

PREBILIC, PAUL B

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 10/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/623,212

Applicant(s)

HART, RICKEY D.

Examiner

Paul B. Prebilit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 61-94 is/are pending in the application.
- 4a) Of the above claim(s) 90-94 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 72 and 84-89 is/are allowed.
- 6) ☒ Claim(s) 61-65, 67-71 and 73-83 is/are rejected.
- 7) ☒ Claim(s) 66 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7/18/03</u> <u>11/19/03</u> | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

Claims 90-94 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention or species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on August 8, 2005.

Information Disclosure Statement

The information disclosure statement was considered to the extent possible because three documents could not be located. Applicant is respectfully requested to provide copies of the missing documents if he would like them considered. Since the documents were apparently lost by the USPTO, the normal fee requirement will be waived for documents filed more than 3 months after the filing date or knowledge of their existence.

Specification

The abstract of the disclosure is objected to because it is not directed to the presently claimed invention that is a method. Correction is required. See MPEP § 608.01(b).

The title of the invention is not descriptive of the presently claimed invention that is a method. A new title is required that is clearly indicative of the invention to which the claims are directed.

Claims 68 and 71 are objected to because of the following informalities: On line 2 of each of claims 68 and 71, "comprises" is considered to be confusing because components of the stabilizing element have already be set forth. The Examiner

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suggests inserting "further" prior to "comprises" in order to overcome this objection.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 61, 62, 67, and 70 are rejected under 35 U.S.C. 102(b) as being anticipated by Kenna (US 5,151,104). Kenna anticipates the claimed method where the stabilizing element as claimed is the first portion (30) of Kenna and the soft tissue as claimed is the ligament (22) or tendon (64) of Kenna; see Figures 1 to 9, column 5, lines 7-26 and column 3, line 22 to column 4, line 68.

With regard to claim 70, since the hole is smaller than the screw portion (28), the attachment is considered to be an interference fit to the extent that such language can be given patentable weight because the smaller hole would produce a great deal of resistance to movement on the screw portion.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 69, 75-80, and 82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenna (US 5,151,104) in view of Li (US 5,707,395). Kenna meets the claim language except for the step of looping the graft through the aperture as claimed. However, Li teaches that it was known to loop grafts through holes in similar implants within the art; see Figure 1 and column 6, lines 36-42. Therefore, it is the Examiner's position that it would have been obvious to loop graft (22) or (64) of Kenna through the opening for its attachment in order to use a double thickness, and thus, a stronger graft, in the place of the single graft used by Kenna.

Claims 63-65, 68, 71, and 83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenna (US 5,151,104) in view of Kenna (US 4,828,896) or Treace (US 3,953,896). Kenna ('104) meets the claim language but fails to disclose the use of a flange therein that is placed outside the hole as claimed. However, both Kenna ('896) and Treace teach that it was known to use flanges on similar anchors that are outside at least one hole to anchor similar grafts; see Figure 3 of Treace and see Figures 3 and 8 of Kenna ('896). Therefore, it is the Examiner's position that it would have been obvious to put a flange on the Kenna ('104) anchors as additional means to secure them to the bone.

Claim 81 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kenna ('104) and Li as applied to claims 69, 75-80, and 82 above, and further in view of Kenna ('104) or Treace (US 3,953,896). Kenna ('104), as modified by Li fails to disclose the use of a flange therein that is placed outside the hole as claimed. However, both Kenna ('896) and Treace teach that it was known to use flanges on similar anchors that are

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outside at least one hole to anchor similar grafts; see Figure 3 of Treace and see Figures 3 and 8 of Kenna ('896). Therefore, it is the Examiner's position that it would have been obvious to put a flange on the Kenna ('104) anchors as additional means to secure them to the bone.

Allowable Subject Matter

Claim 66 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 72-74 and 84-89 are allowed over the prior art of record.

Conclusion

Applicant should specifically point out the support for any amendments made to the disclosure, including the claims (MPEP 714.02 and 2163.06). Due to the procedure outlined in MPEP 2163.06 for interpreting claims, it is noted that other art may be applicable under 35 USC 102 or 35 USC 103(a) once the aforementioned issue(s) is/are addressed.

Applicant is respectfully requested to provide a list of all copending applications that set forth similar subject matter to the present claims. A copy of such copending claims is respectfully requested in response to this Office action if the application is not stored in image format (i.e. the IFW system) or published.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Paul B. Prebilic whose telephone number is (571) 272-4758. He can normally be reached on 6:30-5:00 M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, McDermott Corrine can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Paul Prebilo", with a long horizontal flourish extending to the right.

Paul Prebilo
Primary Examiner
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